the use of the premises in question as an office, etc. for the simple reason that I find that no such condition was imposed in the first instance.

The only other substantial ground is paragraph (b) regarding breach of section 52 of the Local Government Integration Ordinance, 1963 which the plaintiffs claim exposed them to a penalty, fine or forfeiture. Section 52(18)(a), however, provides that responsibility for erecting a building within the meaning of subsection (17) rests with the owner of the building if the person (not being the owner) who actually carried out such building operations is not known or cannot be found in Singapore. It is clear that the plaintiffs would be liable only if the defendants could not be found. It is also clear law that before the landlord can be said to be exposed to any penalty, fine or forfeiture, it must be shown that there was exposure to conviction and not merely prosecution. It is also clear law that there is no exposure to conviction unless facts exist which would support a conviction. (See *Hooi Chuk Kwong* v. *Lim Saw Choo* [2] and *Ho Tong Cheong & Ors.* v. *Oversea-Chinese Banking Corporation Ltd.*[3]). On the facts adduced in evidence before me, I am unable to find that the plaintiffs have been exposed to conviction. There is not the slightest suggestion of even a prosecution of anybody hitherto in connection with alterations made to the outhouse which originally commenced in 1960 or 1961 when plank walls were erected. If the plaintiffs had reported the matter to the authorities, the defendants may well have been caught red-handed and brought to book if the alterations made were considered to contravene section 52 of the Ordinance. The plaintiffs as owners would have run the risk of being prosecuted for any unauthorised erections only if those responsible could not have been found. I cannot think of any reason why the plaintiffs should now complain that they are exposed to conviction especially when the defendants are still in occupation. Furthermore, I am not satisfied that facts have been proved before me which would support a conviction of the plaintiffs.

The only ground on which the plaintiffs succeed therefore is that set out in section 15(1)(a) of the Control of Rent Ordinance.

An order for recovery of possession can be made, once such a ground is proved, only if the court considers it reasonable that such an order should be made.

The history of the relationship between the parties since 1956 in relation to the tenancy not only of the outhouse and its grounds but also of that small space 9 feet x 5 feet in the front part of the hotel (which the defendants ceased to occupy in early January 1965 and which has since been let out to a cosmetic firm) as revealed by the evidence is such that I do not consider it reasonable to make an outright order for recovery of possession. On the one hand, the defendants have always been late in their payment of rent. On the other hand, the plaintiffs have tolerated this state of affairs for many years until late 1966 when the major alterations commenced. As I have said earlier, a report to the chief building surveyor could well have achieved the desired result and cleared the plaintiffs of any responsibility for these alterations. It is now claimed by the defendants that the plaintiffs acquiesced in the alterations at least through P.W.2. P.W.2 claimed to be only a collector of rent but it should be borne in mind that he was then assistant manager and I am inclined to the view that he knows far more about the tenancy than he has cared to tell the court. He left the employment of the plaintiffs in April 1968 which is the month in which the statement of claim was amended to include paragraph 3(c) alleging a breach of a condition of the tenancy with regard to the use of the outhouse as office premises and/or a dwelling-house. This, of course, fortifies me in the conclusion I have already reached earlier to the effect that there was never such a condition in the first place and that its addition in paragraph 3(c) is an after-thought. This brings me to a consideration of whether or not the plaintiffs acquiesced in the alterations as the defendants allege. In view of the opinion I have formed of P.W.2, I think it is more probable that they did through P.W.2 having particular regard to the fact that the outhouse had been allowed to be used as an office at least since 1961 when plank walls were constructed.

Having regard to all these circumstances, I propose to make an order for recovery of possession subject to the condition that it be suspended for as long as the defendants pay the monthly rent of $220 regularly within 7 days of the end of every month and provided the defendants pay all the outstanding rents from 1st March, 1967 till the end of August 1968 at the rate of $220 per month, *i.e.* $3,960 within 14 days hereof.

There will be judgment accordingly with costs to the plaintiffs.

Judgment accordingly.

Solicitors: *M. B. Brash; T. L. Lee & Co.*

SIM GUAN SOON & ANOR. v. KHOO TING HONG & ANOR.

[O.C.J. (Chua. J.) September 26, 1968]
[Singapore — Suit No. 1782 of 1967]

Negligence — Duty of care to trespassers — Contributory negligence — Admission of police report in civil proceedings.

In this case the plaintiffs claimed damages for the benefit of the estate of a deceased's loss of expectation

of life. The facts showed that the deceased was killed by a motor lorry driven by the first defendant which was reversing into a rubbish dump. The deceased was a trespasser on the rubbish dump but it was known that trespassers went on the premises to pick tins there. The plaintiffs relied on a police report made by the first defendant, the driver of the lorry and called no further evidence.

Held: (1) in this case although the deceased was a trespasser the defendants owed a duty of care to her and he first defendant was negligent in reversing the lorry without looking to make sure that the deceased was not behind the lorry;

(2) the accident was contributed to by the negligence of the deceased and the degree of contributory negligence was assessed at 50%.

Case referred to:—

(1) *Commissioner for Railways* v. *Quinlan* [1964] 2 W.L.R. 817.

CIVIL SUIT.

H. E. Cashin for the plaintiffs.

Chao Hick Tin (State Counsel) for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiffs in this case are the administrators of the estate of Lim Siew Liang, deceased, and they bring this action for damages for the benefit of the estate for the deceased's loss of expectation of life.

The plaintiffs' case is that on the 29th March, 1967, the deceased was at the rubbish dump at Kolam Ayer Lane looking over rubbish when she was run into and killed by a motor lorry driven by the first defendant, the servant or agent of the second defendant, and which was reversing into the said rubbish dump. The plaintiffs allege that the first defendant did not look to the rear to ensure that it was safe to reverse at the time.

By agreement the report which the first defendant made to the police after the accident was put in at the outset of the hearing by counsel for the plaintiffs. The report reads as follows:—

"At a/m time and date I drove the above lorry to dump the refuse. On arrival at the said place I then reversed the lorry to have it in position before dumping the rubbish, when suddenly I heard shouts that someone was being run down by my lorry. I got down and found that somebody — a F/Chinese lady was lying behind my lorry. I did not know her condition but ran off for fear of being assaulted."

Counsel then informed the court that the plaintiffs had no eye witness to the accident and was not calling any witness and that he relied on the report of the first defendant to establish a *prima facie* case of negligence against the first defendant. In my view such a case has been made out.

The case of the defendants is that:—

(1) the deceased was a trespasser on the dumping ground and she entered it at her own risk and they owed no duty to take reasonable care for her protection.

(2) the accident was not caused by the negligence of the first defendant.

(3) the accident was caused solely or alternatively contributed to, by the negligence of the deceased.

The dumping ground at Kolam Ayer was under the control of the Ministry of Health.

The evidence of how the accident happened was given by the first defendant. His evidence is shortly this. He has been driving a lorry of the Public Health Division of the Ministry of Health for one and a half years prior to the accident. He has been many times to the dumping ground at Kolam Ayer. On the day of the accident he went there in the lorry to dump refuse. He turned into the dumping ground from the drive in and stopped. He looked in the nearside rear-vision mirror to see whether there was any person or vehicle behind. He did not see anything. He then opened the offside door of his lorry and turned round and looked towards the rear. He did not see anything behind the lorry. He then engaged the reverse gear and slowly reversed the lorry towards the face tip and while reversing he was looking at the nearside and offside rear-vision mirrors. He had reversed about fifteen feet when he heard someone shouted "Oh! Oh!" He thought that there was a vehicle behind. He changed gear and drove forward. A person ran near his lorry and told him that he had knocked down a person. He got down from the lorry and went to the rear and he saw an old woman lying on the ground behind the lorry.

The first question for decision is whether the deceased was a trespasser. The evidence of the superintendent public cleansing and of the divisional public health assistant clearly show that no unauthorised persons were allowed in the dumping ground but nevertheless many people, as many as a hundred each time, trespassed to collect scrap metal, tins, rags etc. from the refuse discharged there by the refuse lorries.

Clearly the deceased was a trespasser and in fact the plaintiffs do not dispute it.

The next question for consideration is whether the first defendant did look to the rear before reversing. Having regard to the report that he made to the police in which he did not say that he looked to the rear and saw no one before reversing and his statement in his evidence that when he heard someone shouted "Oh! Oh." he thought there was a lorry behind I think that in fact he did not look to the rear before reversing. If that is not negligence I do not know what is.

What is the defendants' liability in the light that the deceased was a trespasser?

The law is clearly summarised at p. 53, paragraph 49, of 28 *Halsbury*, thus:—

"Duty to trespassers. The occupier of premises has no duty to take reasonable care for the protection of a trespasser, or even to protect him from concealed danger. The trespasser comes on to the premises at his own risk. The protection afforded by this rule is not limited to the occupiers of land but extends to those who control structures or objects such as a ship, part of a ship in a dry dock or a vehicle. The occupier is in such a case liable only where the injury is due to some wilful or reckless act involving something more than the absence of reasonable care. When a trespasser is known to be present, the occupier must abstain from doing an act which if done carelessly must reasonably be contemplated as likely to injure him and abstain from doing acts which are intended to injure him."

In the case of *Commissioner for Railways* v. *Quinlan*,[1] Viscount Radcliffe (delivering the judgment of the Privy Council) said at p. 838:—

"Their Lordships have studied with care and respect the judgments of the members of the Court of Appeal in England in *Videan* v. *British Transport Commission*, two of which adopt much the same line of reasoning as that upon which their Lordships have commented in the recent High Court cases in Australia: but they remain quite unpersuaded that the measure of an occupier's duty to a trespasser can be determined in all cases by what is called the foreseeability test or that it is correct to describe the nature of the duty by saying that if the circumstances are such that the occupier 'ought to foresee' even the presence of a trespasser, the duty of care exends to the trespasser also. . . . the situation would be less liable to be misunderstood if it were explained that the only trespasser to whom the occupier is accountable for his actions, even if dangerous, is one of whose presence he actually knows or one whose presence at the time of injury can fairly be described as extremely likely or very probable."

Now what are the facts in this case? The evidence of the first defendant and of the superintendent public cleansing and of the divisional public health assistant clearly show that the defendants knew the presence of the trespassers and in fact on the day of the accident the first defendant saw many trespassers picking tins there. On the authority of *Quinlan's* case the defendants owed a duty of care to the deceased and the act of the first defendant in reversing without looking to make sure that the deceased was not behind the lorry was negligence on his part.

The remaining question is whether the accident was contributed to by the negligence of the deceased. The deceased surely was aware that the Public Health lorries go in and out of the dumping ground and that these lorries reverse to get to the face tip to tip the refuse. Yet she failed to keep a proper look out and failed to observe that the lorry was reversing and failed to move to a safe spot to avoid the accident. I assess the degree of contributory negligence on her part at 50%.

General damages and special damages have been agreed at $3,500 and $1,100 respectively.

There will be judgment for the plaintiffs in the sum of $2,300 and costs.

Judgment for the plaintiffs.

Solicitors: *Murphy & Dunbar.*

VISVASAM v. SINGAPORE TODDY TAPPERS' UNION

[O.C.J. (Chua J.) September 26, 1968]
[Singapore — Suit No. 2058 of 1964]

Industrial Law — Trade Union — Expulsion of member by executive council — Breach of natural justice — Resolution to expel member ultra vires — Extent to which court will examine decision of domestic tribunal.

In this case the plaintiff had been expelled from the membership of the defendant union. He claimed that he was not afforded any opportunity of stating his case before the executive council of the union before his expulsion. He alleged therefore that the purported expulsion was contrary to the principles of natural justice. He claimed a declaration that the expulsion was *ultra vires*, an injunction restraining the defendants, their officers and servants from acting upon or enforcing the resolution and damages. It was argued *inter alia* on behalf of the defendants that the relief claimed should not be granted as the plaintiff had not exhausted the domestic remedies available to him by appealing to the annual or extraordinary general meeting against his expulsion.

Held: (1) the resolution of the executive council to expel the plaintiff could not be supported and was *ultra vires* as being contrary to natural justice in that the executive council had not given the plaintiff an opportunity of stating his case before them and had not acted in the matter of the said resolution in a judicial manner;

(2) there was no contractual provision in this case requiring domestic remedies to be exhausted before resort to the courts and therefore the plaintiff was entitled to the reliefs claimed.

Cases referred to:—

(1) *White* v. *Kuzych* [1951] 2 All E.R. 435.

(2) *Lee* v. *The Showmen's Guild of Great Britain* [1952] 2 Q.B. 329.

(3) *Annamunthodo* v. *Oilfield's Workers Trade Union* [1961] 3 All E.R. 621.

(4) *Lawlor* v. *Union of Post Office* [1965] 1 All E.R. 353.

CIVIL SUIT.

Y. R. Jumabhoy for the plaintiff.

Lai Kew Chai for the respondents.

Cur. Adv. Vult.

Chua J.: The plaintiff's claim in this case is:—

"(1) For a declaration that the resolution of the executive council of the defendant union passed on 19th August 1964 purporting to expel the plaintiff from the membership of the defendant union was and is *ultra vires* on the ground that the same was and is contrary to natural justice, in that the said executive council gave the plaintiff no opportunity of stating his case before them, and the said execu-